



Signed and Filed: June 04, 2009

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 08-30904 TEC
	)	
NGA TUY PHAM,	)	Chapter 7
	)	
	)	
Debtor.	)	
_____	)	
NGOC LAN THI NGUYEN,	)	Adv. Proc. No. 08-3073 TC
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
NGA TUY PHAM, YEN CHUNG, KENNY HUNG	)	
WAI NG, and QUAN THANH CHUNG,	)	
	)	
Defendants.	)	
_____	)	

MEMORANDUM DECISION RE PHASE I OF TRIAL

The court bifurcated trial of the above-entitled action, directing that Plaintiff's claims against Yen Chung be tried in Phase I, and that Plaintiff's claims against Nga Tuy Pham be tried in Phase II. Phase I was tried on May 26, 2009. Robin E. Foor appeared for Plaintiff. John Chow and Roberto Ripamonte appeared for Defendant Yen Chung. This memorandum decision shall constitute the court's findings of fact and conclusions of law.

MEMORANDUM DECISION  
RE PHASE I OF TRIAL

1 Plaintiff Ngoc Lan Nguyen (Plaintiff) was a close friend of  
2 Defendant Nga Tuy Pham (Pham). Defendant Yen Chung (Chung) is  
3 Pham's married adult daughter. From about 2002 until August 2006,  
4 Plaintiff made various loans to Pham that have not been fully  
5 repaid. Plaintiff contends that Pham obtained these loans by  
6 fraud, never intending to repay, and inducing Plaintiff to make the  
7 loans by impersonating the spirit of Plaintiff's dead brother and  
8 in that guise urging Plaintiff to loan Pham money.

9 Among the transactions between Plaintiff and Pham is a  
10 cashier's check in the amount of \$8,500 purchased by Plaintiff on  
11 January 20, 2004, made payable to Chung, and delivered to Pham (the  
12 Cashier's Check). Pham testified that the Cashier's Check  
13 represents repayment of a loan she made to Plaintiff. Plaintiff  
14 testified that the Cashier's Check represents a loan she made to  
15 Pham and Chung. The subject of Phase I is Plaintiff's claim that  
16 Chung is obligated to return the \$8,500 transferred to her via the  
17 Cashier's Check under a theory of unjust enrichment or implied  
18 contract.

19 I determine that Chung has no liability for receipt of the  
20 Cashier's Check.

21 To the extent transfer of the Cashier's Check was a loan from  
22 Plaintiff, it was a loan to Pham, to which Chung was not a party.  
23 There were no discussions between Plaintiff and Chung regarding the  
24 transfer. Chung made no promise to repay and never acknowledged  
25 any debt, orally or in writing, directly or indirectly. Pham did  
26 not act as an agent for Chung in obtaining the funds. Chung did  
27 not ask Pham to obtain the funds. Chung and Pham did not agree  
28 between themselves that Chung would repay either Pham or Plaintiff.

1 Pham did not represent to Plaintiff that Chung would repay the  
2 funds. Chung did not guarantee repayment.

3 There was no relationship or trust and confidence between  
4 Plaintiff and Chung. To the extent there was a relationship of  
5 trust between Plaintiff and Pham, that relationship did not change  
6 the basic nature of the transaction described above: that any  
7 obligation to Plaintiff created by the transfer of the Cashier's  
8 Check was in the nature of a loan to Pham, not to Chung.

9 To the extent there was any fraud in obtaining the Cashier's  
10 Check from Plaintiff, Chung did not participate in that fraud, and  
11 had no knowledge of that fraud.

12 Chung did not have beneficial use the funds transferred via  
13 the Cashier's Check. Pham retained dominion and control of the  
14 funds at all times. The Cashier's Check was made payable to Chung  
15 at the direction of Pham. Chung applied the funds as directed by  
16 Pham, and not pursuant to her own wishes. On the same day she  
17 received the Cashier's Check, Chung made the following transfers at  
18 the direction of Pham from the proceeds of the Cashier's Check:  
19 \$1,500 in cash to Pham; \$2,000 by check to Pham; and \$3,000 by  
20 check to Pham's laundromat. One month later, Chung transferred the  
21 remaining \$2,000 to Tran Huynh at the direction of Pham. Pham used  
22 the \$2,000 check to Tran Huynh to buy jewelry for all her children  
23 and grandchildren.

24 California courts follow the Restatement of Restitution in  
25 resolving claims for unjust enrichment and implied contract.  
26 Hirsch v. Bank of America, 107 Cal. App. 4th 708, 721-22 (2003).

27 The Restatement of Restitution provides in relevant part:  
28 "Liability in restitution is based on and measured by the receipt

1 of a benefit, but the receipt of a benefit does not of itself make  
2 the recipient liable in restitution." Restatement (Third) of  
3 Restitution and Unjust Enrichment (Tentative Drafts) § 2(1). The  
4 official comment to section 2 of the Restatement provides in  
5 relevant part:

6 *d. Benefit as the measure of liability.* Liability in  
7 restitution is based on the defendant's receipt of a  
8 benefit constituting unjust enrichment. See § 1, Comment  
9 b. In the absence of a benefit to the defendant, there  
10 can be no liability in restitution; nor can the measure  
11 of liability in restitution exceed the measure of the  
12 defendant's enrichment. Restitution in a proper case may  
13 strip a defendant of all profits gained in a transaction  
14 with the plaintiff, but principles of unjust enrichment  
15 will not support the imposition of a liability that  
16 leaves an innocent defendant worse off, ignoring costs of  
17 litigation, than if the transaction with the plaintiff  
18 had never taken place. Such a result is permissible only  
19 against a defendant whom the law treats as a conscious  
20 wrongdoer. To the extent that liability exceeds benefit,  
21 liability must be justified by reference to some source  
22 of obligation other than the defendant's enrichment at  
23 the plaintiff's expense.

24 Liability for unjust enrichment is measured by the benefit to  
25 the transferee, not by the loss to the transferor. F.T.C. v.  
26 Verity Int'l., Ltd., 443 F.3d 48, 67 (2d Cir. 2006). A party is  
27 not liable in unjust enrichment for the receipt of property over  
28 which that party does not exercise dominion and control. Zell &  
Ettinger v. Berqlas, 690 N.Y.S.2d 721 (Sup.Ct.App. 1999); Bugarsky  
v. Marcantonio, 678 N.Y.S.2d 737 (Sup.Ct.App. 1998).

29 In the circumstances represented by the findings of fact  
30 described above, Chung is not obligated under any theory of unjust  
31 enrichment or implied contract to return all or any part of the  
32 \$8,500 Cashier's Check. Chung had no contractual relationship with  
33 Plaintiff. Chung engaged in no wrongdoing toward Plaintiff. Chung  
34 received no economic benefit from receipt of the Cashier's Check,

1 because she had no discretion to put any part of those funds to her  
2 own use.

3                   **\*\*END OF MEMORANDUM DECISION\*\***  
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MEMORANDUM DECISION  
RE PHASE I OF TRIAL

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